

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
RODNEY FASTERT Rock Rapids, Iowa	NO. 2008-AQ- 30 NO. 2008-SW- 24

TO: Rodney Fastert
3626 120th Street
Rock Rapids, IA 51246

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Rodney Fastert for the purpose of resolving the air quality and solid waste disposal violations which occurred at property owned by Mr. Fastert. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Brandon Miner, Field Office #3
Iowa Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

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III. STATEMENT OF FACTS

1. On July 25, 2008, DNR Field Office 3 received a complaint regarding black smoke coming from Mr. Fastert's property located at 1664 Indian Avenue in rural Rock Rapids, Iowa (Section 7, Liberal Township; Lyon County, Iowa).

2. On July 25, 2008, Brandon Miner, DNR Field Office 3 environmental specialist, investigated the complaint. Mr. Miner observed black smoke and the smell of burning rubber. He observed a hole containing the remnants of 50-75 tires. The tire remnants and tires of various sizes were still smoldering.

3. On July 28, 2008, Mr. Miner spoke to Mr. Fastert on the telephone. Mr. Fastert acknowledged that the tires had been burned, but claimed someone else burned the tires. Mr. Miner informed Mr. Fastert the matter was being referred for further enforcement.

4. On July 30, 2008, DNR Field Office 3 issued a Notice of Violation letter to Mr. Fastert for the open burning violation observed on July 25, 2008. The letter informed Mr. Fastert the violation was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Miner observed tires that had been burned at property owned by Mr. Fastert. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Tires were burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Rodney Fastert agrees to do the following:

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1. Cease all open burning of tires and other non-exempt solid waste in accordance with 567 IAC 23.2(1);
2. Dispose of all tires and tire remnants in accordance with 567 IAC 100.4 and submit the landfill receipts to DNR Field Office #3 within 30 days from the date the Director signs this administrative consent order; and
3. Pay a penalty of \$4,000.00 within 30 days from the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – Mr. Fastert has achieved an economic benefit by burning or allowing the tires to be burned rather than properly disposing of the tires. He saved time, effort, and landfill fees by not properly disposing of the tires. Based on the above considerations, \$1,000.00 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violations threaten the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$2,000.00 is assessed for this factor.

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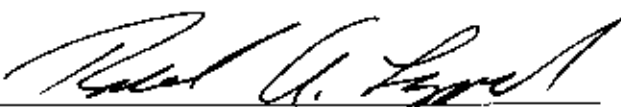
Culpability – Mr. Fastert has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Rodney Fastert. For that reason, Rodney Fastert waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
Sept, 2008.



RODNEY FASTERT

Dated this 25 day of
AUGUST, 2008.

Barb Stock (Con 10-6 Lyon County); Kelli Book; Field Office 3; EPA; VI.C and VII.C.1